IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 3754 of 2007()

CRA.19/2004 of ADDL. SESSIONS COURT FAST TRACK (ADHOC), MAVELIKKARA

CC.1047/2000 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

.....

REVN. PETITIONER: APPELLANT/ACCUSED:

S. MAJITHA,
RAJA BHAVANAM, CHUNAKKARA SOUTH, CHARUMMOODU P.O.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS: COMPLAINANT:

---

1. K. OMANA,
AMBITHARA MEKKATHIL, PEROOR KARAZHMA,CHARUMMOODU.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

==========

Crl.R.P. No. 3754 of 2007

==========

Dated this the 19th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1047 of 2000 on the file of the J.F.C.M, Mavelikkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submission before me:-

The specific case of the revision petitioner during examination under Section 313 Cr.P.C was that she is not the holder of the account from which Ext.P1 cheque was issued. DW1, the Manager of the drawee bank has deposed that even though the account in question pertains to S. Majitha which is the name of the accused, the address

shown in the account is different. So the complainant has not discharged the initial burden of proving that the cheque was issued from the account maintained by the accused. Hence, the prosecution of the accused for the aforesaid offence was bad.

5. I am afraid I cannot agree with the above submission. First of all, the accused did not send a reply to the statutory notice issued to her. No doubt, PW1, the Manager had deposed that the address shown in the account is different from the address shown for the accused, though the names are the same. It was not even put to PW1 during her cross examination that the cheque in question does not relate to the account maintained by the accused or that it does not contain the signature of the accused. When the accused had no reply to the statutory notice and had no suggestion to be put to PW1 that she is not the account holder and that the signature in the Ext.P1 is not that of hers, it was too late in the day for her to come out with such a contention.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C.

The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.55,000/-(Rupees fifty five thousand only) and on default to make the payment, he shall suffer simple imprisonment for three months. Out of the fine amount, the cheque amount of Rs.50,000/-(Rupees fifty thousand only) shall be paid a compensation under Section 357(1) Cr.P.C. Fine amount shall be deposited within four months from today.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

rv